

EXHIBIT 8

In the Matter of:

O'Donnell/Salvatori, Inc. vs Microsoft Corporation

30(B)(6) JONATHAN SEGALL

July 02, 2021

Job Number: 774654

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

O'DONNELL/SALVATORI,
INC., an Illinois
corporation,

Plaintiff/Counterclaim
Defendant,

vs.

MICROSOFT CORPORATION, a
Washington corporation,

Defendant/Counterclaim
Plaintiff.

CERTIFIED COPY

No. 2:20-cv-00882-MLP

VIDEOCONFERENCE 30(b)(6) DEPOSITION UPON ORAL
EXAMINATION

OF

MICROSOFT CORPORATION -- JONATHAN SEGALL, DESIGNEE

Seattle, Washington

DATE: July 2, 2021

REPORTED REMOTELY BY: Douglas Armstrong, RPR
Washington CCR No. 3444

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A P P E A R A N C E S

For Plaintiff/Counterclaim Defendant
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(Present with Witness)

Also Present:

BECKY FRANCIS
Microsoft In-House Counsel
(Via Videoconference)

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1 Seattle, Washington Friday, July 2, 2021

2 9:29 a.m.

3 -----

4
5 JONATHAN SEGALL, witness herein, having been
6 duly sworn by the Certified
7 Court Reporter, testified as
8 follows:
9

10 E X A M I N A T I O N

11 BY MR. LORBIECKI:

12 Q. Mr. Segall, I'm sorry. I know that we've had
13 a delay this morning. I want to assure you that there
14 was no intent to be rude. We've got no reason to be
15 rude to you. It's just the way it is. As I said
16 earlier, we've got a skeletal crew because of the
17 holiday, and so I apologize for the delay. I know your
18 time is valuable.

19 A. Not a problem. Thank you.

20 Q. My name is Mark Lorbiecki. I represent
21 O'Donnell/Salvatori Music Company. I will refer to
22 them from time to time either as O'Donnell/Salvatori or
23 ODS. I'll mean the same entity, the plaintiff in this
24 lawsuit.

25 As you're probably aware, we are -- ODS is

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1 responding to that, by the very basis of it saying
2 "Macworld" in the name, it would lead me to believe
3 that it was an initiative between Bungie and Apple that
4 predated any relationship with Microsoft.

5 Q. Is it a -- one would assume that if it had
6 any Halo melodies when Bungie was purchased by
7 Microsoft, Microsoft became the owner of that music; is
8 that correct?

9 MS. KUMAR: Same objection. Also, asked and
10 answered.

11 A. I don't know.

12 Q. So with regards to the ones that you did
13 prepare, let us start with "Set a Fire in Your Heart."
14 Who decided to include the melody in "Set a Fire in
15 Your Heart"?

16 MS. KUMAR: Again, objection to the
17 characterization of "including the melody in," but he
18 can answer why he -- who made it so there were
19 similarities.

20 A. Yeah. So in regards to the similarities in
21 "Set a Fire in Your Heart," the composer of that
22 particular track was Gareth Coker, and music direction
23 was given by Joel Yarger.

24 Q. Now, we earlier discussed the term "legacy
25 music." Would you refer to this as legacy music?

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1 MS. KUMAR: Objection. Outside the scope of
2 the topic.

3 A. I would not because my definition of "legacy
4 music" is songs for previous soundtracks of older
5 games, and "Set a Fire in Your Heart" is specifically
6 for "Halo Infinite," which is a current product that we
7 are launching this holiday.

8 Q. Would it be fair, then, to characterize it as
9 music based on legacy music?

10 MS. KUMAR: Same objection.

11 A. So I guess my answer would be from a musical
12 standpoint, music draws inspiration from all sorts of
13 places, and it would be a natural thing for there to be
14 inspiration drawn from Halo's rich history of music.

15 Q. Now, you'll note that Subtopic A to Arabic 1
16 says "Who decided to make this monk melody present in
17 the following musical offerings?" And we've referred
18 to "Set a Fire in Your Heart."

19 Who decided that the music should include
20 this melody?

21 MS. KUMAR: Objection. Asked and answered.
22 Same objection to the characterization of "included,"
23 but he's answered it.

24 You can go ahead and answer it again.

25 A. Yeah. Joel Yarger.

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1 Q. Let's move to "Reverie." Who decided to
2 include the monk melody in "Reverie"?

3 MS. KUMAR: Same objection as to the
4 terminology, "include."

5 A. So "Reverie" was composed by
6 Curtis Schweitzer, and music direction was given by
7 Joel Yarger.

8 Q. Same question with regard to "Step Inside."

9 MS. KUMAR: Same objections.

10 A. So "Step Inside" kind of has some layers to
11 it. It was composed with "Reverie" as kind of the
12 foundation of the track, and so per my previous answer,
13 those influences being, you know, Curtis Schweitzer and
14 Joel Yarger. But beyond that, music direction was
15 provided by Joel Yarger, specifically for using
16 "Reverie" in "Step Inside."

17 And then at Joel Yarger's and my own
18 direction, the video includes, in the last few notes,
19 some similarities with portions of the monk melody.
20 And I want to specify that I'm referring to it right
21 now as the monk melody because I became familiar with
22 it as that through preparation for this deposition.

23 Q. You said that you had input on that. Would
24 you explain what your input was.

25 A. Yeah. So after I received direction from

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1 Joel Yarger that they wanted "Step Inside" to
2 essentially be kind of a variation of "Reverie" or
3 influenced by "Reverie," I understood that to mean that
4 they wanted -- they wanted the song to feel more
5 connected to the DNA of Halo. And so given that
6 direction, I worked with Joel to find a melody that we
7 could put at the end that felt connected to Halo.

8 Q. You used a term that I'm not familiar with,
9 "the DNA of Halo." What do you mean by "the DNA of
10 Halo"?

11 A. So I mean when you -- I'll give you an
12 example of Star Wars. When somebody goes, "Bum, bum,
13 bum, bum, bum-bum," you understand that to be kind of
14 integral to Star Wars. Similarly, there are melodies
15 that just immediately associate you to Halo as part of
16 the history of music with it.

17 Q. Are you familiar with who composed what we're
18 referring to as the monk melody?

19 A. Yes.

20 Q. Who?

21 A. In preparation for this deposition,
22 Marty O'Donnell.

23 Q. Well, it was Marty and Mike Salvatori, was it
24 not?

25 MS. KUMAR: Well, I'm going to object because

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1 this is also outside the scope of the topic, and
2 there's also a contract that spells this out. But he
3 can -- he can answer.

4 A. Yes. That would be more accurate.

5 Q. As set out in Subhead B, would you identify
6 each and specifically identify the earliest example of
7 this theme occurring in any Halo-related music for
8 which either of Microsoft or 343 has contracted for its
9 composition.

10 A. So just so that I'm understanding the
11 question, you would like me to identify the first time
12 in which the monk melody has appeared in a song?

13 Q. The first and every time is what it says.
14 Please, if you like, I will let you simply read
15 Subhead B and pose that as the question.

16 MS. KUMAR: So we're going to have another
17 dispute over this because this is another one where we
18 objected to the scope, and we told you what we'd
19 prepare him for. I can pull up the objections, but
20 it's not exactly that.

21 What we agreed to do was to identify each
22 instance since March 2010 which Microsoft, including
23 343 Industries, has commissioned a third-party to
24 compose music for the Halo video games released or to
25 be released as "Halo 1," "Halo 2," "Halo 3," "Halo 3:

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1 ODSF," "Halo: Reach," "Halo 4," "Halo 5: Guardians,"
2 and "Halo Infinite" that include the monk melody
3 identified in Topic A.

4 Q. Please do that.

5 A. Okay. So Microsoft has not commissioned any
6 new musical compositions for "Halo 1," "Halo 2,"
7 "Halo 3," "Halo 3: ODSF," or "Halo: Reach" since March
8 2010; however, Microsoft does believe the musical
9 compositions it commissioned -- I'm sorry. I should
10 not say "however."

11 Microsoft believes the music compositions it
12 commissioned for "Halo 4" do not contain similarities
13 to the monk melody; however, Microsoft does believe
14 certain musical compensations that it commissioned for
15 "Halo 5: Guardians" and "Halo Infinite" may contain
16 similarities to portions of the monk melody. These
17 musical compositions include "Set a Fire in Your
18 Heart," "Reverie," and "Step Inside," as discussed in
19 Topic 1-A, as well as "Halo Canticles" from the
20 "Halo 5: Guardians" soundtrack.

21 Q. Now I'm going to ask you to identify each
22 instance of publication of this on any publically
23 available website.

24 MS. KUMAR: Objection. This is outside the
25 scope of the topic. We agreed to talk about each

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1 instance in which it had been commissioned, not to
2 identify every single time it had been published.

3 Q. I'm awaiting your answer.

4 A. Oh, okay. Well, I want to first give just
5 kind of a setup so that it can help guide kind of how
6 we approach this moving forward. So when Microsoft
7 goes to post any kind of content, that posting
8 happenings on what we call our owned and operated
9 channels, and that kind of goes back to the
10 conversation that we had previously around social media
11 and the distinctions there.

12 And so for "Set a Fire in Your Heart,"
13 Microsoft has posted "Set a Fire in Your Heart" to its
14 Halo-owned channel on YouTube.

15 So I just want to be clear that when I talk
16 about owned channels, there's going to be kind of two
17 subcategories to that. There's going to be owned
18 channels that are run by the Halo team that are
19 distinguished by being a Halo channel, and then there
20 are channels operated by the Xbox team that are
21 distinguished as Xbox channels. In each case, those
22 are owned and operated channels that fall under the
23 Microsoft umbrella, but in some of these instances,
24 I'll be giving responses where it was posted on a Halo
25 channel, an Xbox channel, or both.

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1 Q. Well, please do.

2 A. Okay. So "Set a Fire in Your Heart" was
3 posted to the Halo-owned channel on YouTube. In
4 addition, Microsoft has, through its distribution
5 partner, currently Music Indie Coalition, posted the
6 audio track of "Set a Fire in Your Heart" to the major
7 music platforms, which include Spotify, Apple Music,
8 Amazon Music, and YouTube Music, formerly known as
9 Google Play.

10 Would you like me to keep going, or do you
11 want --

12 Q. Yes, please.

13 A. Okay. When I say "keep going," I mean would
14 you like me to move on to the next track?

15 Q. Yes, please.

16 A. Okay. Microsoft has posted "Reverie" to its
17 Halo-owned channels on YouTube. In addition, Microsoft
18 has, through its distribution partner, currently Music
19 Indie Coalition, posted the audio track of "Reverie" to
20 music platforms such as Spotify, Apple Music, Amazon
21 Music, and YouTube Music.

22 Q. Please continue.

23 A. So "Step Inside." One distinction here is
24 that "Step Inside" is both essentially the name of the
25 track that's being discussed as well as the video that

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1 we put out. So in context of it being both a video and
2 a track, I want to clarify that it was not posted
3 separately as a track. It was just posted as a video
4 which contained the music.

5 So Microsoft has posted "Step Inside" on its
6 Halo-owned channels which are hosted on YouTube,
7 Facebook, Instagram, Twitter, and HaloWaypoint.com, as
8 well as on its Xbox-owned channels which are hosted on
9 YouTube, Facebook, Instagram, Twitter, and Xbox.com.

10 In addition, Microsoft created short-form
11 versions of "Step Inside," a short form meaning taking
12 the full-length video and cutting it down to a shorter
13 length, and that was posted online through paid
14 advertising on YouTube, Twitter, Reddit, Twitch,
15 Polygon, and The Verge, as well as posted through a
16 programmatic audience buy through a company called
17 Xandr. Microsoft also streamed "Step Inside," the
18 video, live as part of the Xbox Games Showcase on
19 July 23, 2020, and it was streamed on the internet.

20 Q. When you say it was streamed on the internet,
21 where was it streamed on the internet?

22 A. There were a variety of places a consumer
23 could access it, but to the best of my knowledge,
24 YouTube and Twitch were the predominant access points.

25 And then, continuing on, "Halo: Outpost

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1 Discovery," again as a video, not a song or soundtrack
2 or title track. Microsoft has posted "Halo: Outpost
3 Discovery" on its Halo-owned channels.

4 And "Halo Infinite Gameplay Demo," again as a
5 video, that contains "Set a Fire in Your Heart" and
6 "Reverie." Microsoft has posted the "Halo Infinite
7 Gameplay Demo" on its Halo- and Xbox-owned channels,
8 and Microsoft also streamed the "Halo Infinite Gameplay
9 Demo" live as part of the Xbox Games Showcase on
10 July 23rd of 2020 and also in the same places I
11 previously mentioned, to the best of my knowledge,
12 running on YouTube and Twitch.

13 Q. Okay. Is that the extent of it?

14 A. That is the extent, yes.

15 Q. You earlier testified about co-branding
16 opportunities. Were there any co-branding
17 opportunities wherein content, including the monk
18 melody, was distributed either by Microsoft or 343
19 Industries?

20 MS. KUMAR: Objection. It's outside the
21 scope of the topic and refers to testimony in his
22 personal capacity.

23 A. Can you restate the question related to
24 co-branding.

25 Q. Did Microsoft distribute any of the content

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1 including the monk melody in any co-branding
2 opportunities?

3 A. I don't know.

4 Q. Did Microsoft distribute any of the content
5 containing the monk melody to third-party distribution
6 opportunities?

7 MS. KUMAR: Same objections.

8 A. I don't know.

9 Q. You were asked to identify each instance of
10 registration of any work that contained the monk melody
11 with either the copyright office or any of the
12 performing rights organizations such as ASCAP and BMI.
13 Would you please tell me about any or every instance of
14 registration.

15 MS. KUMAR: Okay. Just to be clear, what we
16 agreed to produce or identify was with respect to --
17 when we talked about every instance before and he
18 testified, those are the ones that he's prepared to
19 talk about whether they were registered with the
20 copyright office or any performing rights
21 organizations, and he can go ahead and do that. I
22 think it's Topic 1-D; is that right?

23 MR. LORBIECKI: That's correct.

24 MS. KUMAR: Okay.

25 A. So of the music identified in Microsoft's

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1 response to Topic 1-B, registered "Halo Canticles" in
2 "Halo 5: Guardians" with ASCAP. Microsoft also
3 registered the video game "Halo 5: Guardians" for Xbox
4 One, which includes music from the game soundtrack,
5 with the U.S. Copyright Office. Microsoft has not
6 separately registered any music with the U.S. Copyright
7 Office.

8 MS. KUMAR: Any Halo music.

9 A. Oh, sorry. Any Halo music with the U.S.
10 Copyright Office.

11 Q. How about the performing rights
12 organizations? They were also listed there.

13 MS. KUMAR: He just talked about ASCAP. Do
14 you want him to repeat it? I just want to be sure you
15 heard it.

16 MR. LORBIECKI: He talked about the copyright
17 office. I want to make sure. That's the only ASCAP
18 registration you performed?

19 MS. KUMAR: Of the ones -- again, it's
20 limited to the ones that were identified in response to
21 Topic 1-B.

22 Q. In whose name did you -- who were the
23 performers listed with regard to this registration with
24 ASCAP or BMI?

25 A. I don't know.

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1 Q. Who were the registered composers for those
2 works?

3 A. I don't know.

4 Q. In Subtopic E, you were asked to find out who
5 the custodian is of any records relating to
6 registration of any work containing this theme with any
7 copyright office or any performing rights organization.

8 MS. KUMAR: So what we agreed to do was to
9 identify the primary custodian of records relating to
10 registrations identified in response to Topic 1-D, and
11 he's prepared to do that.

12 Q. Please do.

13 A. Okay. So Microsoft has an internal database
14 with copyright registrations, but it appears to be
15 incomplete because of the number of times the data has
16 been migrated to different tools over the years. So
17 Microsoft relies primarily on searching the U.S.
18 Copyright Office records for copyright registrations.

19 Microsoft has no dedicated custodian of
20 records for ASCAP registrations for Halo music.
21 Similarly, Microsoft relies primarily on searching the
22 ASCAP online tool for registrations.

23 Q. If you, in the course of your job duties, had
24 to find out who was registered, how would you do that
25 at Microsoft?

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1 Q. Are you familiar with how platforms such as
2 YouTube distribute click-through revenue?

3 MS. KUMAR: Same objection.

4 A. No, I'm not.

5 Q. Why don't you look at -- we will return,
6 then, to Topic 3, and I will be referring to again to
7 the title "Halo Infinite Discover Hope Cinematic
8 Trailer."

9 Has Microsoft or 343 Industries received any
10 revenue of any sort for this posting? And now you're
11 speaking for Microsoft.

12 A. Well, yeah. I don't know, because this
13 particular URL and trailer that you're directing me to
14 was not posted by Microsoft. It was posted by
15 GameSpot.

16 MS. KUMAR: This is 3-E, right, where we are?

17 MR. LORBIECKI: We're on D, but --

18 MS. KUMAR: I'm sorry. Wait. We're on --

19 MR. LORBIECKI: 3-D.

20 MS. KUMAR: 3-D. Okay.

21 MR. LORBIECKI: E as in "echo," not D as in
22 "delta."

23 MS. KUMAR: Got it. Thank you.

24 A. Yeah. So just to repeat, one, this video
25 wasn't posted by Microsoft. And then, secondly,

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1 Microsoft does not receive revenue for videos that we
2 ourselves post online to our owned and operated
3 channels.

4 Q. You're stating that directly for Microsoft?
5 You are denying that Microsoft receives any revenue as
6 is contained in either of Subtopics C or D with
7 reference to this title?

8 MS. KUMAR: For the video, correct? Because
9 we've talked about the difference between music and
10 video.

11 MR. LORBIECKI: C and D are -- I don't know.
12 All right. With regard to music, then.

13 THE WITNESS: Can I have a moment?

14 MS. KUMAR: There's a question pending.
15 You've got to answer.

16 THE WITNESS: Okay.

17 MS. KUMAR: Unless you have a question about
18 privilege.

19 MR. LORBIECKI: No.

20 MS. KUMAR: Not you. If he has a question
21 about privilege. If he does, he can consult with me,
22 but otherwise, no.

23 A. So in regard to any music, there was a window
24 of time in which YouTube was monetizing music on behalf
25 of Halo and 343 Industries using their algorithm, which

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1 identified when videos were placed on the internet.
2 Excuse me. Not placed on the internet. Placed on
3 YouTube. And that was basically decommissioned by
4 343 Industries or Halo because it was resulting in fans
5 being unable to post their content to YouTube.

6 I don't know the time frame in which that
7 happened or in which it was turned off. That's kind of
8 my hesitancy. So I only know a vague time period.

9 Q. Who made the decision?

10 A. I don't know.

11 Q. What department would have made the decision?

12 MS. KUMAR: Objection. Calls for
13 speculation. Asked and answered.

14 MR. LORBIECKI: No, it wasn't.

15 Q. What department would --

16 MS. KUMAR: He already said, "I don't know."
17 Anyway, it calls for speculation. Go ahead.

18 A. Yeah. I legitimately don't know which
19 department would have made that call.

20 MS. KUMAR: This is also outside the scope of
21 the notice.

22 MR. LORBIECKI: No, it isn't. It's right
23 there in C and D.

24 MS. KUMAR: Okay. I disagree.

25 Q. Moving on to title "Halo Infinite Campaign

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1 Gameplay Premiere Score" which is Topic 4, who decided
2 to place that music on the YouTube website?

3 A. Just give me just one moment to find that.
4 Okay. Yes. This video was posted to the Halo-owned
5 channel at the URL provided, and that was done though
6 the Halo community team led by Brian Jarrard, posted on
7 the Halo-owned channel on YouTube.

8 Q. You've answered with regard to video. The
9 question I asked was who placed the music?

10 MS. KUMAR: Objection. Vague. It's a video
11 containing music. I'm not sure how you could place
12 music specifically.

13 MR. LORBIECKI: He's earlier testified that
14 music has been placed with another trailer on various
15 websites.

16 MS. KUMAR: I still think this is vague, but
17 you can ask him to answer.

18 A. So the "Halo Infinite Campaign Gameplay
19 Premiere," which is a video, I do know includes the
20 track "Set a Fire in Your Heart." So is the question,
21 then, who placed "Set a Fire in Your Heart" online?

22 Q. Let's ask that question. Who placed "Set a
23 Fire in Your Heart" online, the music?

24 MS. KUMAR: Objection. Vague. Where? When?

25 MR. LORBIECKI: I'll ask each of those

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1 questions.

2 Q. Where and when was it placed on the internet,
3 and who placed it there? Who decided to place it
4 there?

5 A. The placement would have been done by the
6 343 Industries audio team. I don't know who
7 specifically made that call.

8 And in terms of when, it would have been done
9 within the last year because it would have happened
10 after this gameplay premiere debuted, which happened in
11 July of 2020. So it would have happened after July of
12 2020.

13 Q. Where has it been placed?

14 MS. KUMAR: I think we've already --

15 A. Yeah. So just to be clear, we have gone
16 through this, but we're now just kind of answering,
17 because it was also the same track anyway.

18 MS. KUMAR: I think this is now Topic 1-C
19 that he's going back to --

20 THE WITNESS: Okay.

21 MS. KUMAR: -- which is any instances in
22 which Microsoft has published to any of its websites
23 each of the music compositions in 1-A. So if you want
24 to refer to that, you can.

25 THE WITNESS: Sure.

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1 A. So it was placed on the Halo channel on
2 YouTube as well as the music platforms that we've
3 previously discussed, being Spotify, YouTube Music,
4 Amazon Music, and Apple Music.

5 Q. Has Microsoft received revenue for that
6 placement?

7 MS. KUMAR: Objection. Compound. He just
8 named a bunch of different platforms.

9 Q. For any of those platforms, has Microsoft
10 received any revenue?

11 A. Yes. As previously stated, there is revenue
12 generated for any song that Microsoft places on those
13 music platforms. We don't generate revenue on YouTube,
14 but we do on the music platforms, and that is handled
15 through Indie Music Coalition.

16 Q. How much have you received for that?

17 A. I don't know.

18 MS. KUMAR: You should have -- again, we
19 talked about how you have these records. We can give
20 you the Bates range if you'd like, not right this
21 second, but I can get it for you.

22 Q. On any of those placements, has any of the --
23 either O'Donnell/Salvatori Music or either of
24 Marty O'Donnell or Michael Salvatori been recognized as
25 a composer?

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1 A. I would -- I would need to check, but I would
2 be absolutely shocked. I mean, I would be absolutely
3 shocked if you went on to Spotify and -- oh, wait. I'm
4 sorry. I'm getting thrown off on which songs we're
5 talking about here.

6 MS. KUMAR: Are we back to topic -- are we on
7 "Set a Fire in Your Heart," or are we on --

8 A. Just to be clear, I want to make sure that we
9 are talking about the music within Topic 4, "Halo
10 Infinite Campaign Gameplay."

11 Q. We are.

12 A. Okay.

13 Q. Specifically, I'm talking about Subtopic E to
14 Topic 4.

15 A. So they've been recognized. They have been
16 recognized on Xbox.com and Halo Waypoint, but
17 specifically to the various music platforms that we've
18 been talking about, I don't know. I didn't check those
19 platforms.

20 Q. Would you --

21 MS. KUMAR: Wait. Sorry. Before you start
22 again, can we take a break real quick? I'm sorry.

23 MR. LORBIECKI: Sure.

24 MS. KUMAR: Okay. We'll be back in ten.

25 (Recess.)

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1 BY MR. LORBIECKI:

2 Q. With regard to this "Halo Infinite Campaign
3 Gameplay Premiere Score," were any of
4 O'Donnell/Salvatori Music, Marty O'Donnell, or
5 Michael Salvatori recognized in any of the placement of
6 the music on the internet?

7 MS. KUMAR: I'm sorry. What topic are we on?

8 MR. LORBIECKI: We're still on 4.

9 MS. KUMAR: Okay. And are you --

10 THE WITNESS: It isn't a score. It's a
11 video.

12 MS. KUMAR: Yeah. So again, I think we just
13 need to be clear when we're talking about video versus
14 music.

15 MR. LORBIECKI: The topic is music.

16 MS. KUMAR: I know. And, Mark, this is
17 another issue we might have to fight over, but we've
18 objected that, you know, it's for an expert to opine on
19 what music is, quote/unquote, contained or included in.

20 And so we did way in our response -- to
21 which, again, I say you didn't respond -- that we would
22 be willing to talk about the video. So he's prepared
23 to answer that question with respect to the video.

24 MR. LORBIECKI: Are you suggesting that it
25 takes an expert to understand where a portion of a

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1 soundtrack is placed on the internet? Is that the
2 position of Microsoft right now?

3 MS. KUMAR: No. What I'm saying is it is the
4 subject of expert testimony as to whether the monk
5 melody is contained in a particular video or track or
6 whatever we want to call it.

7 You know, we've said this many times. You
8 know, Microsoft itself -- and you said as long as it
9 was on the record, it was okay with you -- is not going
10 to opine about what music is contained or included in
11 something. You know, we've been careful to talk about
12 what's similar and not similar, but we're not -- we
13 can't go beyond that without expert testimony.

14 MR. LORBIECKI: Did I say monk melody? I
15 said what portion of the music that is in the video is
16 placed on the internet?

17 MS. KUMAR: I guess I'm not -- I'm still not
18 sure what that question means, but I guess if Jonathan
19 understands, he can answer it.

20 A. So just to be clear, like, I'm not going to
21 be prepared to answer music-specific questions to a lot
22 of these. I can answer Topic 4, "Halo Infinite
23 Campaign Gameplay Premiere" video because in a previous
24 section, we specified. In the section regarding
25 similarities to the monk chant, we did say that the

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1 "Halo Infinite Gameplay Demo" contains "Set a Fire in
2 Your Heart" and "Reverie." So that's -- I just want to
3 be clear that the reason why I know those songs are in
4 there is because I prepared for that under similarities
5 to the monk chant.

6 But as far as all of these other video links,
7 I'm not prepared to speak to like what specific tracks
8 are in those videos. That's just not something I can
9 do.

10 So I can answer it, though, for Topic 4,
11 "Campaign Gameplay Premiere" because it was -- it was
12 in the scope of what we looked at in terms of
13 similarities for the monk chant. Does that make sense?

14 Q. Do you agree with me that both Topic 4-A and
15 4-B speak to music?

16 MS. KUMAR: Okay. I'm going to object. He's
17 not a lawyer.

18 We told you in our response what we would
19 testify to. We used the word "video." We did not use
20 the word "music." If that's something that you have a
21 problem with, then we'll probably need to fight that
22 battle out in court, but it's not something that the
23 witness himself needs to talk about.

24 MR. LORBIECKI: Is this not a lawsuit about
25 music? Did I lose track of something?

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1 MS. KUMAR: I'm not honestly sure how to
2 respond to that, Mark.

3 MR. LORBIECKI: I read these as talking about
4 music.

5 MS. KUMAR: Again, we provided you a list of
6 the scope that we would testify to. We had a
7 meet-and-confer phone call about it. You agreed to get
8 back to us by June 10th with any problems you had with
9 it. You didn't.

10 You claim that in this one email string about
11 a video of Bonnie Ross, that is also not within the
12 scope of the topics, that you wholesale rejected our
13 changes, but that's not our position or our view.

14 MR. LORBIECKI: I'll stick with the language
15 of the notice.

16 MS. KUMAR: Okay. Then he's not -- I'm
17 telling you he's not prepared. Other than this one
18 that he's identified, he's not prepared to talk about
19 the music.

20 He's also testified that any videos -- to his
21 knowledge, any videos that were posted were posted to
22 Microsoft-owned channels for which there is no revenue
23 and that any audio posted by Microsoft was done through
24 very specific platforms to which there was revenue,
25 audio only, that is. And you have the records for that

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1 revenue. So I'm not -- I'm confused as to what
2 information you're lacking.

3 MR. LORBIECKI: We will press on. I am
4 prepared to reserve my position with regard to these
5 topics express music. And we may as well just simply
6 say that the same stuff -- your objections, my
7 position -- is repeated all the way through so that we
8 don't have to argue on each of these points because
9 they're duplicated throughout.

10 MS. KUMAR: That's fine. I may from time to
11 time remind you of my objection and you can remind me
12 of your response, but I don't think we need to get into
13 a colloquy like this again. I think we understand each
14 other's positions.

15 BY MR. LORBIECKI:

16 Q. Moving on to Topic 5, the Halo --

17 MS. KUMAR: I'm sorry. Mark, you're cutting
18 out a little bit. I don't know why.

19 THE COURT REPORTER: Counsel, can I just say
20 when you're shuffling papers, that's all that's heard.

21 MS. KUMAR: Okay. Got it. Go ahead, Mark.

22 Q. In Topic 5, with reference to the title "Halo
23 Infinite E3 2018 Announcement Trailer," who decided to
24 place that on the internet?

25 A. So that was posted to the Halo-owned channel

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1 at the -- by the Halo community team by Brian Jarrard
2 at the Halo-owned channel on YouTube.

3 Q. And where was the music posted?

4 MS. KUMAR: Same objection as before.

5 A. So I want to just again clarify that I'm not
6 prepared to answer music-related questions in these
7 videos, but I can tell you that my answer, even if I
8 did know, would be exactly as previously stated, that
9 music gets posted on the music platforms that we've
10 discussed at length. And when it gets posted outside
11 of that, it goes on the YouTube channel that we own and
12 operate that is not monetized.

13 Q. Your answer would be the same with regard to
14 each of these as to who made the decision not to
15 monetize; is that correct?

16 MS. KUMAR: Okay. Objection. I don't think
17 he talked about who decided to monetize or not
18 monetize.

19 And also, it will help, I think, if I clarify
20 that some of the topics refer to videos that were
21 posted by Microsoft itself. Some were not. And so if
22 you want to streamline the deposition and ask about,
23 you know, which ones were posted by Microsoft and have
24 a set of questions for those and have a set of
25 questions for those that were not, that will probably

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1 streamline things if you'd like to do that instead of
2 going one by one.

3 Q. Is it your position that Microsoft or 343
4 Industries has received no revenue from the posting of
5 music on social media websites?

6 MS. KUMAR: Objection. That mischaracterizes
7 his testimony.

8 A. Yeah. I don't know because I only know that
9 as of right now, this very moment, we do not. We do
10 not monetize.

11 MS. KUMAR: On video.

12 THE WITNESS: On video, yes.

13 Q. Turning now to Topic 6, "Halo Infinite
14 Campaign Gameplay Trailer," who decided to place this
15 trailer on the internet?

16 A. So this was posted to the Halo channel at the
17 website provided, and that was done through the Halo
18 community team, led by Brian Jarrard. They posted this
19 video to the Halo-owned channel on YouTube.

20 Q. Would you agree that all of the other music
21 channels that we've previously expressed in response to
22 the prior questions to our Topics 2 through 4 also
23 apply to the music relative to this trailer?

24 MS. KUMAR: I'm sorry. Doug, can you repeat
25 that.

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1 Q. Would you agree --

2 MS. KUMAR: Okay.

3 Q. -- that that the music posted relative to
4 this trailer, that was contained in this trailer, would
5 have been posted to the same sites that we referred to
6 with reference to 4 and 5?

7 MS. KUMAR: Okay. I just want to be clear
8 that the sites you're talking about are the music
9 platforms and that Halo and -- maybe Jonathan knows
10 what you're talking about, but I just want to have a
11 clear record about what sites you're talking about.

12 MR. LORBIECKI: He earlier answered all those
13 other music sites that I talked about above, so I'm
14 trying to say would this be to the same sites so he
15 doesn't have to continue to list them.

16 A. If the music was posted, then it would be on
17 those sites, but I do not know if the music from this
18 trailer was posted because I'm not familiar with what
19 tracks are in this video.

20 Q. All right. I reserve my same issue.

21 MS. KUMAR: Okay.

22 Q. Moving on, Topic 7, "Halo Infinite Official
23 Cinematic Trailer Xbox Showcase 2020." I'm assuming
24 that because this is Xbox, you're specifically aware of
25 more information here than you might be on some of the

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1 others; is that correct?

2 MS. KUMAR: Objection. Vague. But go ahead.

3 A. That's incorrect.

4 Q. Okay. Why is it incorrect?

5 A. Because this video was not -- the particular
6 video that is linked to in this document was not posted
7 by Microsoft. It was posted by a company called IGN.

8 Q. Does Microsoft have any relationship to IGN?

9 MS. KUMAR: Objection. Outside the scope of
10 the topic, if it's that broad.

11 Q. All right. Relative to the music, does
12 Microsoft have any contractual relationship with IGN?

13 MS. KUMAR: Same objection, but go ahead.

14 A. Not relative to music, no.

15 Q. How about relative to videos?

16 MS. KUMAR: Same objection.

17 A. Nothing contractual, no.

18 Q. When you say "nothing contractual," what is
19 the nature of the relationship?

20 A. IGN operates in two kind of distinct
21 functions. One is as a content publisher, and one is
22 as an advertising publisher. So on the consent side,
23 they function as more of an outlet for news and
24 information. And so in that vein, the relationship
25 with Microsoft is more PR in nature.

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1 And then on the advertising side, IGN as a
2 publisher of advertisements, the relationship with
3 Microsoft can, not in this instance, but can be from a
4 paid advertisement placement. But I want to clarify
5 that it is not in this instance.

6 Q. You're familiar with each of the trailers
7 that are set out in each of the topics, are you not?

8 MS. KUMAR: Objection as to when you say
9 "familiar," what you mean. But go ahead.

10 A. I have watched through all of these, yes.

11 Q. Does IGN have any relationship to Microsoft
12 relative to any of these trailers?

13 MS. KUMAR: Objection. Outside the scope.

14 A. So I can -- I can answer just based off of
15 there's no contractual relationship here regarding any
16 of these trailers. IGN is operating independently in
17 this scenario as more of a content publisher.

18 Q. What does that mean?

19 MS. KUMAR: Objection. Vague. Go ahead.

20 A. They operate a website that they populate
21 with articles and videos, but as to how they obtain
22 those articles and videos, I don't know all their
23 different methods.

24 Q. As you're sitting here, are you asserting
25 that with regard to each of these trailers, Microsoft

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1 nor 343 Industries, neither of them have provided
2 content to IGN as a content publisher?

3 MS. KUMAR: Objection. It's outside the
4 scope.

5 And when you say "each of these trailers," do
6 you mean the trailers in all of the topics?

7 MR. LORBIECKI: Yes.

8 MS. KUMAR: Okay.

9 A. I don't know. I -- yeah, I don't know.

10 Q. Again, with regard to this trailer, if the
11 music was published by Microsoft, would the same group
12 of music outlets apply to this as have applied to
13 earlier trailers where you identified such outlets?

14 A. So, yeah, I'm going to -- it's the same
15 response. I don't know specifically what music was in
16 this video, but any Halo music that is posted by
17 Microsoft gets posted to the platforms that we have --
18 the music platforms that we have discussed.

19 Q. And are we still using the definition "posted
20 by Microsoft" to include 343 Industries, any vendors,
21 any other contractual partners of Microsoft?

22 MS. KUMAR: Objection. Mischaracterizes his
23 testimony.

24 A. As I've testified today, it would include 343
25 Industries and the Indie Music Coalition.

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1 Q. Moving on to Subtopic 8, for the trailer
2 "Halo 6: Infinite Gameplay Trailer 2020," who decided
3 to post that to the internet?

4 A. It wasn't Microsoft. We didn't post this
5 video. It appears to be posted by an independent third
6 party called GameCheck.

7 Q. Does Microsoft or 343 Industries have any
8 relationship with GameCheck?

9 A. No. I've never heard of them up until this
10 deposition.

11 Q. Would the -- was the music in this posted
12 anywhere else that you're aware of? And I'm talking
13 about the music now, anywhere else that you're aware of
14 the internet.

15 MS. KUMAR: Same objection.

16 A. Yeah. I don't know.

17 Q. Moving on to Topic 9, the title is "Halo:
18 Master Chief Collection, The Ultimate Halo Experience
19 Trailer." Who decided to post this on the internet?

20 A. So this particular YouTube link that was
21 provided was not posted by Microsoft. It was posted by
22 IGN, IGN being the previous media company that we
23 discussed.

24 Q. Did Microsoft provide the content that IGN
25 posted?

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1 MS. KUMAR: Okay. That's fine.

2 So the title of this one, Mark, according to
3 our records is "Halo 5: Guardians/Master Chief."
4 There's no "score" in the title that we can see. So we
5 just want to be sure you're referring to the trailer, I
6 think.

7 MR. LORBIECKI: We're referring to the
8 trailer that's listed by URL in Topic 12.

9 MS. KUMAR: Okay. Thanks.

10 A. Yeah. So to the best of my knowledge,
11 Xbox On is an independent third party unaffiliated with
12 Microsoft, so we didn't post this video ourselves.

13 Q. For the sake of the court reporter, will you
14 please spell who owns this.

15 MS. KUMAR: Objection. Misstates his
16 testimony about ownership, but as to who --

17 MR. LORBIECKI: Posted it.

18 A. Yeah. The company or the brand is called
19 Xbox On, and as far as to the best of my knowledge,
20 they're not officially affiliated with Microsoft.

21 Q. I'm just wondering is that last part that
22 you're saying "On," the letter O, the letter N?

23 A. Correct. Xbox and then the word "On."

24 Q. Okay. I just want to make sure it's
25 reflected appropriately in the record.

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1 MS. KUMAR: It's X-B-O-X, space, O-N.

2 Q. And has Microsoft received any revenue
3 relative to this trailer?

4 A. Well, no, not that I'm aware of, because we
5 don't receive revenue for videos that we post, even
6 though, you know, we did not post this one.

7 Q. I'm not sure I understood your answer.
8 You're saying -- let's do it this way.

9 Did Microsoft receive any revenue for this
10 posting? Yes or no?

11 A. Not that I'm aware of, because we don't have
12 an affiliation with this. And I was just adding to my
13 answer that per my previous answers, that any video
14 that we do post, we do not receive revenue for.

15 Q. Moving on to Topic 13, "Halo 4 Teaser" or at
16 least the trailer identified by the URL that is in
17 Topic 13. Who made the decision to post that?

18 A. Yeah. That was posted to the Halo-owned
19 channel on YouTube by the Halo community team led by
20 Brian Jarrard.

21 Q. Okay. Do you also not receive revenue from
22 that?

23 A. Correct.

24 Q. Topic 14, "Halo Legends Trailer." Who
25 decided to post that?

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1 A. It was not posted by Microsoft, and it
2 appears the video titled "Halo Legends Trailer HD" was
3 posted by an independent third party unaffiliated with
4 Microsoft called thEntrtrnr, and it's spelled quite
5 oddly. It's T-H and then E-N-T-R-T-N-R. Again, that's
6 T-H-E-N-T-R-T-N-R.

7 Q. The question about revenue: Has Microsoft
8 received any revenue from this posting on the internet?

9 A. Not that I'm aware of, no.

10 Q. Topic 15, "Halo Nightfall Official Trailer
11 2015." Who decided to place this on the internet?

12 A. Again, Microsoft did not post this video. It
13 appears to be posted by an independent third party
14 unaffiliated with Microsoft by the name FTZ. Again,
15 that's FTZ.

16 Q. Okay. Did Microsoft receive any revenue from
17 the posting of this video or the music?

18 A. Not that I'm aware of, no.

19 Q. Topic 16, "Halo Legends Origins, Part 2."
20 Who decided to post that on the internet?

21 A. Again, it was not posted by Microsoft. It
22 appears to be posted by Sparkletron Prime, an
23 independent third party unaffiliated with Microsoft.
24 And that's, again, Sparkletron Prime.

25 Q. Two words or one?

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1 A. Two words. If you'd like me to spell it, let
2 me know.

3 MR. LORBIECKI: Mr. Court Reporter, are we
4 okay?

5 THE COURT REPORTER: Please spell all of
6 these because they could always be spelled unusually.

7 THE WITNESS: It's S-P-A-R-K-L-E, and in the
8 same word, T-R-O-N. Sparkleton. And then, second
9 word, Prime, P-R-I-M-E.

10 Q. Inasmuch as you've already determined that
11 the trailer identified in 17 predated your current
12 position at Microsoft, who made the decision to post
13 this on the YouTube website?

14 A. Are we talking about Topic 16 still?

15 Q. No. We've moved to 17.

16 MS. KUMAR: Oh, okay.

17 A. Okay. I do not know the answer to that.

18 Q. Who was your predecessor in your current
19 position?

20 A. My predecessor was Ryan Cameron.

21 Q. Would he have been the person who normally
22 would have made that decision?

23 MS. KUMAR: Objection. Lacks foundation.
24 Calls for speculation.

25 A. I don't know.

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1 Q. This is a video owned by Microsoft, right?

2 MS. KUMAR: Objection. Lack of foundation.

3 A. It -- yes.

4 Q. And it was posted by virtue of someone at
5 Microsoft making that decision; is that correct?

6 A. That is correct.

7 Q. And what department would make such a
8 decision?

9 A. It's -- it could have been either through
10 product marketing or marketing communications, and I
11 work in the marketing communications department.

12 Q. But you don't know?

13 MS. KUMAR: Objection. Asked and answered.

14 A. I wasn't on the team at that time frame. So
15 I'm just not -- I'd be guessing if I told you who made
16 the decision.

17 Q. Read Subtopic a to 17, please.

18 MS. KUMAR: Here.

19 A. "Who decided to and who placed this music on
20 the YouTube website?"

21 Q. So it's fair to say that this was fully in
22 the scope of the topics set forth for today's
23 deposition; is that correct?

24 MS. KUMAR: He's not a lawyer. Object as to
25 what's in the scope or not. I haven't objected to it

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1 being outside the scope, and nonetheless, he's answered
2 the question. He doesn't know.

3 MR. LORBIECKI: Microsoft doesn't know.

4 MS. KUMAR: He said he doesn't know. I'm
5 happy to -- let me finish, Mark. I'm happy to find out
6 whether we know the answer or not. I agree that it is
7 in the scope, and that's something we can easily do
8 after the deposition. But it was posted by Microsoft.

9 Q. Has Microsoft received any revenue from this
10 posting?

11 A. Not that I'm aware of, no.

12 Q. Will you agree that that's all within the
13 scope of what you should have prepared?

14 MS. KUMAR: He said -- I'm sorry. He said
15 not that he's aware of, not that he didn't know. He's
16 prepared on this topic.

17 Q. What other places has Microsoft placed music
18 for this trailer?

19 A. So again, previous to our other, you know,
20 discussions on this, I can't speak to the specific
21 music in this trailer, but I can tell you that anytime
22 we post Halo music, it goes on the music platforms that
23 we have discussed.

24 Q. And did you receive -- did you, Microsoft,
25 receive any revenue for the music postings?

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1 A. When we do post music -- again, I can't say
2 specific to Topic 17, but when we do post music, there
3 is revenue received from those music platforms.

4 Q. And how would we know how much music was --
5 or how much revenue was received for the music in this
6 instance?

7 MS. KUMAR: You have those records. You have
8 the records for audio-only content posted to music
9 platforms.

10 Q. Moving on to Topic 18, who decided to post
11 the trailer identified by the URL listed in Topic 18?

12 A. It was not posted by Microsoft. It appears
13 to be posted by IGN.

14 Q. Does it include any content provided to IGN
15 by Microsoft or any Microsoft affiliate?

16 A. I don't know.

17 Q. Moving on to Topic 19, who decided to post
18 the trailer identified by the URL in Topic 19?

19 A. That was posted by the Halo community team
20 led by Brian Jarrard, and it was posted to the
21 Halo-owned channel on YouTube.

22 Q. Where is the music that accompanied that or
23 that is contained in that trailer posted?

24 MS. KUMAR: Same objection as before.

25 A. Yeah. I'm not familiar with exactly what

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1 music is in this trailer, but again, I can tell you
2 that anytime we post Halo music to a platform, it is
3 posted to the music platforms we've discussed, which
4 are monetized.

5 Q. Moving on to 20, who decided to post the
6 trailer that's located at the URL listed in Topic 20?

7 A. That was posted by an independent third party
8 unaffiliated be Microsoft called GameSpot.

9 Q. Spelled like it sounds?

10 A. Game, G-A-M-E, Spot, and it's one word.

11 Q. Did Microsoft receive any revenue from that
12 posting?

13 A. No, not that I'm aware of.

14 Q. Did Microsoft receive any revenue from the
15 posting of the music?

16 MS. KUMAR: Same objection as before.

17 A. Yeah. I don't know.

18 Q. Moving then to Topic 21, who posted the
19 trailer identified by the URL listed in Topic 21?

20 A. It was posted by our Xbox social team through
21 our agency of record for social media, Ayzenberg,
22 posted the video to the Xbox-owned channel on YouTube.

23 Q. Is this an instance of what you earlier were
24 referring to with regard to third-party marketing?

25 MS. KUMAR: Objection. Vague.

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1 A. This would be an example of partnership-based
2 marketing, which it's not a third party, but it is an
3 example of partner marketing.

4 Q. Who was --

5 A. So just to clarify, when I said third-party
6 marketing when we were discussing that previously, that
7 was a role for third-party games, not third-party
8 affiliates.

9 Q. Are you aware of other instances where Halo
10 music has been used with third-party affiliates?

11 MS. KUMAR: Objection. Outside the scope of
12 the topic. Calls for speculation.

13 A. Not that I'm aware of, no.

14 Q. What revenue did Microsoft receive for this
15 posting?

16 A. As far as I'm aware -- or no. Microsoft
17 received no revenue for this because we do not receive
18 revenue for posting on our own channels.

19 Q. Do you receive any consideration from the
20 third-party affiliate for posting this on a Microsoft
21 channel?

22 A. I'm sorry. I don't quite understand the
23 question.

24 Q. Do you get anything for posting a Doritos add
25 on your channel?

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1 A. Well, okay. So, well, this is a partnership
2 with Taco Bell. And when you say, "Did you get
3 anything," could you be more specific, please.

4 Q. Did you receive anything of value for this
5 posting, anything at all that has any value to
6 Microsoft?

7 A. Specific to this posting, I don't know.

8 Q. You earlier described this as receiving the
9 opportunity to post in front of a particular audience,
10 those that are affiliated with Taco Bell. Did you get
11 that out of this?

12 MS. KUMAR: Objection. Misstates his
13 testimony.

14 A. Well, the particular video and link that I'm
15 giving my answers to were posted on our own channel, so
16 it reached our own audience. So this was more of a
17 favor that we did for the partner.

18 Q. A favor? What do you mean by "a favor"?

19 A. Okay. In other words, in the world of
20 partnerships, it was a co-marketing favor in the sense
21 of something that we did without the exchange of money.

22 Q. Does Microsoft receive some favor in return?

23 MS. KUMAR: I'm going to object to it being
24 outside of the scope of the topic which talks about
25 revenue, not something of value.